

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1316 of 1984

with

Cross Objection (St) No.1998 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAHULBHAI MAHENDRAKUMAR

GODADHRA

Versus

VIJAYKUMAR M SHAH

Appearance:

1. First Appeal No. 1316 of 1984
MR BHARAT B SHAH for Appellant
MR KF DALAL for Respondent No. 1
NOTICE SERVED for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. By filing instant appeal under Section 110-D of
the Motor Vehicles Act, 1939 ('the Act' for short), the

appellant/original claimant seeks to challenge the judgment and award dated 28.4.1983 rendered in MACP No. 225 of 1981 by the learned Motor Accident Claims Tribunal No.3 (Main), City Civil Court, Ahmedabad, by which the claim petition filed by the claimant claiming compensation of Rs.1,00,000/- on account of the motor vehicular accidental injuries suffered by the claimant, came to be partly allowed and thereby the claimant was awarded an amount of Rs.61,400/- together with cost and interest at the rate of 6% from the date of the petition till realization of the amount and accordingly respondent No.3 - insurance company was directed to satisfy the said award.

2. It was the case of the claimant that on 22.6.1981 at about 10 A.M., the claimant was going towards the office of Gujarat Small Industries Corporation situated at Sukhram Nagar, Ahmedabad where he was serving, on his scooter bearing registration No.GJA 667, alongwith one pillion rider Navnitbhai Somabhai. When the claimant reached near the place of occurrence, Matador bearing registration No. MRL 6684 came from the opposite direction driven by respondent No.1 in a rash and negligent manner and with great speed. When respondent No.1 was turning the matador, it dashed with the front portion of the scooter of the claimant as a result of which the claimant as well as the pillion rider were thrown off the scooter and both of them sustained injuries.

3. According to the case of the claimant, the accident took place because of the rash and negligent driving of the Matador by respondent No.1. Respondent No.2 being the owner of the Matador and respondent No.3 being the insurance company they were jointly and severally liable to pay compensation as claimed in the claim petition. The claimant, therefore, filed the claim petition, claiming Rs.1,00,000/- by way of compensation under various heads.

4. It was the case of the claimant that on sustaining injuries, he became unconscious and was removed to L.G. Hospital for treatment and thereafter he was shifted to Dr. M.T. Mehta's orthopaedic hospital and till 6.8.1981 he remained as an indoor patient. He remained out of job for a period of seven months and, therefore, he suffered economic loss for the said period. As a result of the accident, the claimant had suffered injuries in the nature of fracture and as a consequence thereof he has become disabled to the extent of 18% of the body as a whole. His scooter was also damaged. He

has suffered future economic loss. Therefore, the claimant filed the claim petition claiming compensation to which reference is made earlier.

5. Respondent Nos.1 and 2 remained absent before the Tribunal. However, respondent No.3 Insurance Company by filing written statement denied the claim made by the claimant. It was also denied that because of the rash and negligent driving of the Matador by respondent No.1 the accident had taken place. According to the insurance company, the claimant himself was contributory negligent. The nature of injuries sustained by the claimant so also the damage caused to the scooter was also denied. Therefore, it was prayed to dismiss the claim petition filed by the claimant.

6. The Tribunal framed issues and recorded the evidence. Thereafter on appreciation, evaluation and careful analysis of the evidence, the Tribunal came to the conclusion that because of rash and negligent driving of the matador by respondent No.1 the accident in question took place and, therefore, respondent No.1 was the main tort-feasor, respondent No.2 being the owner of the matador involved in the accident, was vicariously liable and respondent No.3 being the insurer of the vehicle involved in the accident, was liable to indemnify the owner of the offending vehicle.

7. So far as the quantification of compensation is concerned, the Tribunal has awarded compensation under the following breakup:

- i) Rs.15,000/- under the head of pain, shock and sufferings.
- ii) Rs.32,400/- towards future economic loss.
- iii) Rs. 2,000/- damage caused to the scooter.
- iv) Rs.12,000/- medical expenses, including special diet and attendant charges.

Rs.61,400/- Total

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The Tribunal has, therefore, awarded in all Rs.61,400/together with interest at the rate of 6% per annum and proportionate cost and accordingly the insurance company was directed to satisfy the award which has given rise to the present appeal at the instance of the original claimant.

8. Respondent No.3 Insurance company, being aggrieved by the said award, has filed cross objections

as according to it the award passed by the Tribunal is on higher side.

9. Mr. Bharat B. Shah, learned advocate of the claimant, has contended that the award passed by the Tribunal is on lower side. The claimant had claimed RS.20,000/- under the head of pain, shock and sufferings but the Tribunal has awarded only RS.15,000/- It was seriously assailed by him that under the head of economic loss, no amount is awarded though the claimant had remained out of job for a period of 7 months. The claimant had availed leave from the balance lying to his credit and therefore the Tribunal ought to have awarded at least Rs.4,000/- under the head of economic loss considering the salary of the claimant at the relevant time at Rs.700/- per month. So far as the damage caused to the scooter is concerned, bills for Rs.3850/- were produced by the claimant but the Tribunal has awarded only Rs.2,000/- Therefore, the award is required to be modified to the aforesaid extent. He, therefore, urged to modify the award passed by the Tribunal by awarding additional compensation of Rs.38,600/-

10. Mr. Dalal, learned advocate of the respondent No.3 Insurance company, has contended that there is no infirmity in the impugned judgment and award. The accident had taken place way back in the year 1981 and in those days looking to the price index, the Tribunal has awarded just and proper compensation which does not require any interference. According to him, the award passed by the Tribunal is on higher side and, therefore, the Insurance Company has filed counter claim to reduce the compensation awarded to the claimant.

11. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the impugned judgment and award and the set of evidence supplied by the learned advocates appearing for the parties.

12. So far as the factum of accident is concerned, there is no dispute that on the fateful day i.e., 22.6.1981 when the claimant was going towards the office of Gujarat Small Industries Corporation at Sukhram Nagar, Ahmedabad, where he was serving, on scooter alongwith pillion rider Navnitbhai Somabhai, and he when reached near the spot of occurrence, respondent No.1 came driving the offending matador in a rash and negligent manner and in an excessive speed and when he was taking turn, the matador dashed with the front portion of the scooter of the claimant as a result of which the claimant and the

pillion rider were thrown off the scooter and sustained injuries. The claimant sustained serious bodily injuries on his right leg and face and there were internal and external injuries.

13. So far as the aspect of negligence is concerned, it has not been seriously assailed by Mr. Dalal, learned advocate of respondent No.3. It is, therefore, clear that the Tribunal has very rightly held that the accident took place because of the ash and negligent driving of the offending matador by respondent No.1.

14. So far as the quantification of compensation is concerned, this Court has considered the nature and number of injuries sustained by the claimant and the prolonged treatment taken by the claimant at LG Hospital, Civil Hospital and thereafter at Dr. M.T. Mehta's Orthopaedic hospital. The claimant was bed ridden for about six months and he had remained on leave for over six months. On the ground of pain, shock and suffering, the Tribunal has awarded Rs.15,000/- as against the claim of Rs.20,000/- Having considered the evidence on record, I am of the opinion that under the head of pain, shock and sufferings the claimant would be entitled to Rs.20,000/- instead of RS.15,000/- as awarded by the Tribunal and thus the claimant is entitled to receive Rs.5,000/- as additional compensation under the head of pain, shock and sufferings.

15. It may be noted that the Tribunal has not award any amount under the head of economic loss. At the relevant time the claimant was earning Rs.700/- per month by way of salary from Gujarat Small Industries Corporation where he was serving. It has also come in evidence that the claimant had availed leave of seven months and, therefore, the Tribunal has committed an error in not awarding the amount under the head of economic loss. Therefore, the claimant is entitled to get the compensation under the head of economic loss. In this view of the matter, the claimant is entitled to get $\text{Rs.700} \times 7 \text{ months} = \text{Rs.4,900/-}$, rounded off at Rs.5,000/- under the head of economic loss.

16. So far as the amount awarded under the head of damage to the scooter and medical expenses, etc., are concerned, I do not find any infirmity in the quantification done by the Tribunal.

17. Thus, the claimant is found entitled to additional amount of compensation on the following breakup:

(i) Rs.5,000/- for pain, shock and sufferings.

(ii) Rs.5,000/- for past economic loss.

Rs.10,000/- Total

18. In aforesaid view of the matter, the claimant is entitled to get additional compensation of Rs.10,000/with interest at the rate of 6% per annum from the date of the filing of the petition till the amount is deposited by respondent No.3 before the Tribunal with proportionate costs.

19. So far as the counter claim filed by respondent No.3, Insurance Company, is concerned, Mr. Dalal, learned advocate of respondent No.3 has failed to pointed out any infirmity in the impugned award showing that the award is on higher side. On the contrary, as observed in the foregoing paragraphs of this judgment, the claimant is found entitled to get an additional compensation of RS.10,000/- Therefore, the counter claim lacks merit and deserves to be rejected.

20. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed with costs. The appellant/claimant is entitled to get additional compensation of Rs.10,000/- with interest at the rate of 6% per annum from the date of the filing of the petition till the amount is deposited before the Tribunal, with proportionate costs. Modified award to be drawn accordingly in aforesaid terms.

21. The counter claim filed by respondent No.3, Insurance Company is dismissed with no order as to costs.

22. Mr. Dalal, learned advocate of respondent No.3, states that the insurance company will deposit the additional amount of Rs.10,000/- with interest and cost as aforesaid within eight weeks from today before the Tribunal.

23. It is needless to say that as and when the additional amount of compensation, as aforesaid, is deposited by respondent No.3 before the Tribunal, the Tribunal shall pay the same to the claimant, on due verification, by an account payee's cheque, after deducting Court fees, if any, recoverable from the claimant.

(A.M. Kapadia, J.)

(karan)